IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8066 OF 2004

Jagonda Kalgonda Patil .... Petitioner
Vs.
Arvind Mohanlal Shah & Anr. .... Respondents

Sarvasri A.A. Kumbhakoni with A.M. Kulkarni
for the Petitioner.

Sarvasri N.V. Walawalkar with G.H. Keluskar
for the Respondents.

**CORAM:** R.M.S. KHANDEPARKAR, J.

**DATED:** OCTOBER 25, 2004

**P.C:**

1. Heard the learned Advocates for the parties.

2. The petitioner challenges the concurrent findings arrived at by the Courts below on the point of acquisition of alternative suitable premises by the petitioner for his residence and occupation and that being the ground for eviction of the petitioner from the suit premises. Both the Courts below, on analysis of the evidence on record, have concurrently held that it is not the case of the petitioner that the bungalow constructed by the petitioner is not sufficient or convenient or suitable for his residence and his profession as an Advocate. Undisputedly, the petitioner along with his second wife and son is residing in the

new house whereas his first wife and another son reside in the suit premises. Undisputedly, there is no evidence on record to disclose that there is no place sufficient to accommodate the first wife and another son in the new bungalow or that the new bungalow, if allowed to be occupied by the first wife and the second son, it would be inconvenient or unsuitable for the residence of the petitioner and his family members. The only ground which was disclosed for continuation of occupation of the suit premises is that it is more convenient for the office premises of the petitioner. The petitioner is an Advocate by profession since 1955. The newly constructed premises is located hardly at a distance of 5-6 kms. from the Court premises. Though it was said it is inconvenient for the clients of the petitioner to approach him in the newly built premises, as the suit premises are situated in the vicinity of the Court, no witness in support of such contention was examined and not a single client of the petitioner had come before the Court in support of the contention of the petitioner about inconvenience to his clients to contact the petitioner at the newly built premises. Besides, the contentions which are sought to be raised appear to be contrary to the pleadings of the petitioner in the written statement. The respondents had approached the Court with the specific case that the lease of the premises was for residential purpose of the petitioner.

It was sought to be disputed by the petitioner while contending that the lease was primarily for the purpose of office of the petitioner as an Advocate. It is revealed from the records and there is a clear finding by the Courts below that the petitioner obtained the LL.B. degree only in 1955. The premises were let out much prior to the said year of 1955. In other words, the premises were let out to the petitioner at the time when the petitioner was yet to obtain the LL.B. degree. Being so, the question of taking the premises on lease for office purpose of the petitioner as an Advocate never arose at the time when the lease of the suit premises was granted. In the background of this plea, which has been proved to be incorrect, inspite of the fact that the petitioner had been an Advocate for about 43 years on the day when the written statement with the false plea was filed by the petitioner in the case in hand, coupled with the concurrent findings arrived at by the Courts below on detail analysis of the evidence on record disclosing acquisition of alternative suitable premises for the residence of the petitioner and clear finding that the premises were let out primarily for the residence of the petitioner, there is no case for interference in the impugned judgment in exercise of writ jurisdiction under Article 227 of the Constitution of India. Being so, the petition is liable to be dismissed and is hereby accordingly dismissed.

3. On oral request by the learned Advocate for the petitioner, time to vacate the suit premises is extended till 28-2-2005 subject to submitting undertaking by the petitioner and every major member of the petitioner's family as well as those occupying the premises, to be filed before the Registrar (Judl.) of this Court within three weeks from today assuring that the petitioner shall handover the vacant and peaceful possession of the suit premises to the respondents/landlord on or before 28-2-2005 and shall not induct any third person nor shall create any third party interest in the suit premises.

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